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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------|-------------|----------------------|---------------------|------------------|
| 10/705,204 | 11/10/2003 | Nils Ove Gustavsson | 49458/60049 CON | 2934 |
| 21874 | 7590 | 07/23/2004 | EXAMINER | |
| EDWARDS & ANGELL, LLP | | | AZPURU, CARLOS A | |
| P.O. BOX 55874 | | | ART UNIT | |
| BOSTON, MA 02205 | | | PAPER NUMBER | |

1615

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,204

Applicant(s)

GUSTAVSSON ET AL.

Examiner

Carlos A. Azpuru

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29, 31-47 and 49 is/are rejected.
- 7) ☒ Claim(s) 48 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/27/08</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Receipt is acknowledged of the preliminary amendment and information disclosure statement filed 11/10/2003.

Applicant is requested to forward the claims of 09/970,649 in order to review them for double patenting issues. These claims were unavailable at the time of this examination.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-28 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-23, 25-29 of copending Application No. 10/162,674. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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Claim 29 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 31 of copending Application No. 10/627,920. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 29, 31-47, and 49 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-19 of prior U.S. Patent No. 6,692,770. This is a double patenting rejection.

Claims 1-28 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-28 of prior U.S. Patent No. 6,706,288. This is a double patenting rejection.

Claim 48 is objected to as dependent upon a rejected base claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Carlos A. Azpuru', with a long horizontal flourish extending to the right.

**CARLOS A. AZPURU
PRIMARY EXAMINER
GROUP 1500**